

REMARKS

In this Amendment, claims 1-12 are canceled and claims 23-29 are new. Withdrawn claims 13-22 are amended so as to be eligible for rejoinder in accordance with MPEP §821.04.

Claims 23-29 are under consideration in this Office Action.

New claims 23-29 are supported by the original claims, as well as by the specification at page 5 (description of Figure 3a); page 8; page 16, (Examples 8 and 9); and page 13.

Claim 24-26 are further supported by the specification at page 6 (description of Figure 5b), and the first paragraph at page 8.

Claim 27 is further supported by original claim 2 (and the description of Figure 5a at page 6).

Claim 28 is further supported by page 13 (Table 1).

Withdrawn claims 13-22 have been amended to be dependent from, and consistent with, the elected claims, and thus are eligible for rejoinder.

Withdrawn claims 13-22 have also been amended for clarity. These amendments are supported by the original claims, as well as by pages 8 through 10 of the specification.

No new matter has been added.

Entry of this Amendment is requested.

I. Summary of the Invention

Independent claim 23 recites: "A *Mycobacterium* promoter, wherein the promoter is stable in *M. smegmatis* and *E. coli*, and consists essentially of the 200 base pair fragment upstream and adjacent to the *Mycobacterium tuberculosis* relA/SpoT gene."

The present invention, as defined by independent claim 23, relates to an *in vitro* model for the long term persistence of *M. tuberculosis* in the macrophage during infection. The model, which employs a stable *Mycobacterium* promoter upstream and adjacent to the *relA/spoT* gene, is therefore useful for identifying inhibitors of latent *Mycobacteria*.

II. Substitute Specification

At page 3 of the Office Action, the Examiner states that a substitute specification is required, although the Examiner has not indicated any particular correction that is necessary.

Upon review of the specification, it is believed that the specification is sufficient, and it is not clear what changes should be made.

Thus, if a Substitute Specification is necessary, the Examiner is respectfully requested to identify at least some changes that are required.

III. Response to Rejection Under 35 USC §101

At page 4 of the Office Action, claims 1-2 are rejected as encompassing the promoter in its natural state.

Independent claim 23 recites: “A *Mycobacterium* promoter, wherein the promoter is stable in *M. smegmatis* and *E. coli*, and consists essentially of the 200 base pair fragment upstream and adjacent to the *Mycobacterium tuberculosis relA/SpoT* gene.”

Claim 23 and the claims dependent thereon do not encompass the promoter in its natural state, because the claimed promoter “consists essentially of the 200 base pair fragment upstream and adjacent to the *Mycobacterium tuberculosis relA/SpoT* gene.”

The semi-closed language of “consists essentially of” refers to the essential property of the promoter: its stability in *E. coli* and *M. smegmatis* (see the specification at page 4, lines 5-9; page 9, lines 7-8; and page 13).

IV. Response to Rejections Under 35 USC §102(b)

At page 4 of the Office Action, claims 1-2 are rejected under 35 USC §102(b) as being anticipated by Fleischmann et al. (U.S. Patent 6,294,328). Specifically, the Examiner contends that Fleischmann discloses a promoter having the nucleotide sequence of SEQ ID NO: 2.

Independent claim 23 recites: “A *Mycobacterium* promoter, wherein the promoter is stable in *M. smegmatis* and *E. coli*, and consists essentially of the 200 base pair fragment upstream and adjacent to the *Mycobacterium tuberculosis* relA/SpoT gene.”

Fleishmann does not teach a *Mycobacterium* promoter that consists essentially of the 200 base pair fragment upstream and adjacent to the *Mycobacterium tuberculosis* relA/SpoT gene, and thus, Fleishmann does not anticipate the present claims.

Withdrawal of this rejection is requested.

V. Response to Rejections Under 35 USC §112, Second Paragraph

At pages 4-6 of the Office Action, claims 2-12 are rejected under 35 USC §112, second paragraph, as being indefinite for the following reasons.

(1) The Examiner states that the term “the” or “said” is required before the word “promoter” in claims 2 and 4, and that “2.5 folds” should be “2.5 fold.”

(2) The Examiner states that the phrase “said system comprising of promoter of 200 bp having SEQ ID NO. 2 in a vector pSAK12” is confusing.

(3) The Examiner states that claims 5 and 6 are indefinite because it is not clear whether the glucose is the carbon source.

(4) The Examiner states that claims 7-12 are indefinite because it is not clear whether the bacteria actually harbor the vector, and whether the vector contains the promoter.

(5) The Examiner states that claims 7-12 are indefinite because the relationship between starved conditions and 0.02% glucose is not clear.

(6) The Examiner states that claims 7-12 are indefinite because an article such as “the” should be inserted at appropriate positions.

(7) The Examiner notes that claim 12 depends from itself.

New claims 23 through 29 have been presented to address these issues.

New claims 23-29 are in compliance with 35 USC §112, second paragraph, and thus withdrawal of this rejection is requested.

VI. Conclusion

In view of the above, reconsideration of this application is requested.

If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Amendment Under 37 C.F.R. § 1.111
Application No. 10/764,553

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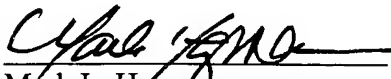
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